

Entered on Docket

April 13, 2020

EDWARD J. EMMONS, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: April 13, 2020

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:

PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC COMPANY, )

Debtors.

Affects PG&E Corporation

Affects Pacific Gas and  
Electric Company

Affects both Debtors

\* All papers shall be filed in

the Lead Case, No. 19-30088 (DM).)

) Bankruptcy Case

) No. 19-30088-DM

) Chapter 11

) Jointly Administered

) Date: April 14, 2020

) Time: 10:00 AM

) Place: Courtroom 17

450 Golden Gate Ave.

16th Floor

San Francisco, CA

**ISSUES FOR COUNSEL TO ADDRESS AT THE APRIL 14 HEARING  
ON THE TCC STANDING MOTION**

The briefing to date raises myriad issues that appear to go far beyond the initial request by the TCC in its Standing Motion ("Motion"). There is no need to revisit them now. It is enough to state that the Debtors and the TCC are at odds over what is at stake in the Motion and what applicable insurance issues control; the TCC and the Lead Plaintiff are at odds over whether

1 the absolute priority rule has any relevance, and what each  
2 wishes to gain by the Motion. What seems missing from the  
3 discussion, however, are the following threshold questions that  
4 trouble the court and tempt it to do nothing but deny the Motion  
5 and await further developments.

6 First, motions to dismiss by the non-debtor defendants have  
7 been submitted for decision by Judge Davila in the Securities  
8 Litigation. The parties have represented to this court  
9 (although this court has not examined those papers to confirm)  
10 that defendants there have not argued that the claims are  
11 derivative. Or stated differently, as Debtors now argue, the  
12 more precise issue is whether the Securities Litigation Claims  
13 are property of the Debtors or of the present and former  
14 securities holders (See Dkt. No 6739, at fn. 3).

15 If this court allows the TCC to prosecute its proposed  
16 Complaint for Declaratory Judgment (Dkt. No. 5972-2) in this  
17 court, what happens if there are inconsistent outcomes? Stated  
18 specifically, if Judge Davila denies the pending motions to  
19 dismiss, is he implicitly if not explicitly concluding that the  
20 Plaintiffs' claims there are direct claims and thus not the  
21 Debtors' property? Could that be reconciled with a ruling here  
22 that the claims are the Debtors' derivative claims, and can be  
23 assigned to the TCC?

24 Next, the Securities Litigation is stayed as to the  
25 Debtors, so what purpose would be served by the proposed  
26 Complaint that seeks injunctive relief under 11 U.S.C. §  
27 362(a)(3)? And on a related point, if all that is presently  
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1 prosecuted in that action are claims against non-debtors, where  
2 is there jurisdiction, or even a good reason, to enjoin at all?

3 More importantly, over the objection of the Lead Plaintiff,  
4 this court denied its FRCP 23 motion and authorized a process  
5 that is still pending, namely the assertion of direct claims  
6 against the Debtors under Securities and Securities Exchange  
7 laws. At present there is no information available to the court  
8 as to who and how many claimants have come forth. How,  
9 therefore, can the TCC justify seeking to press an unfiled  
10 action against known defendants who are not pressing their  
11 claims against the Debtors, but not including in their proposed  
12 action the real (and presently unknown) parties who would be  
13 asserting claims against the Debtor? A ruling either way on the  
14 Complaint would not bind those unknown claimants.

15 Finally, the TCC makes the problem more circular and more  
16 unsolvable at present by invoking the absolute priority rule  
17 notwithstanding the uncontroversial proposition that all claims  
18 that are or will be asserted by the Securities and Securities  
19 Exchange law claimants are subordinated under 11 U.S.C. §  
20 510(b), to the extent that are against the Debtors. As asserted  
21 against present or former officers and directors or investment  
22 bankers the absolute priority has no application.

23 At the April 14 hearing at 10:00 AM, counsel for the TCC  
24 and for the Securities Plaintiffs will each have thirty minutes  
25 for oral argument, including time for rebuttal by the TCC.  
26 Counsel for Debtors and for the OCUC will have a total of thirty  
27 minutes, to be shared as they agree.

1       All parties should understand that unless something  
2 remarkable straightens out this very confusing and somewhat  
3 circular mess, the court will deny the Motion, wait for the  
4 extended claims deadline to pass, for Judge Davila to rule and  
5 for the assignment of claims to the TCC to become effective. If  
6 in the meantime the Debtors move for approval of any settlement  
7 of some or all of the district court Securities Litigation, or  
8 related claims implicating their D & O coverage, the TCC and all  
9 other interested parties will be provided a right to be heard  
10 under FRBP 9019.

11                                  \*\*\*END OF ORDER\*\*\*  
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